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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,996	12/17/2001	Joseph R. Callol	ACS 57812	4121

24201 7590 09/24/2004

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EXAMINER

THALER, MICHAEL H

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 09/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/022,996

Applicant(s)

CALLOL ET AL. *CA*

Examiner

Michael Thaler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 8-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/8/02, 4/25/03.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lam (5,607,444) in view of Kim (6,270,524). Lam, in figures 5 and 7, for example, discloses the steps of providing a stent having a first section 24 and a second section 25, mounting the stent on a catheter (figure 7) having a long balloon (the long balloon on the left side of the figure) and a short balloon (the short balloon on the right side of the figure), advancing the catheter and stent through the vascular system to a position proximal of the bifurcation 22, positioning the stent so that the second section 25 is aligned with the opening to the side branch vessel (the vessel oriented generally vertically in figure 7), inflating the balloons to radially expand the stent so that the first section 24 is apposed to the main vessel (the vessel oriented generally horizontally in figure 7) proximal of the bifurcation and the second section 25 is apposed to the opening of the side branch vessel and

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deflating the balloons and withdrawing the catheter. Lam fails to specifically disclose that the first and second sections have a plurality of rings. However, Lam teaches that the stent possesses a tubular structure with some geometric pattern that facilitates shape retention and expansion (col. 5, lines 49-65). Kim teaches that a stent should be constructed of a plurality of rings 14 apparently in order to obtain the advantage of facilitating shape retention and expansion (col. 9, lines 22-33). It would have been obvious to use this construction for the Lam stent so that it would have the above described advantage. As to claim 8, the second section 25 of Lam inherently forms an elliptical cross-section when conforming to the vessel walls 41 (as described in col. 7, lines 8-10) since it expands greatly in the directions to the top and bottom of figure 7 (along the axis of the side branch vessel) but curves around the circumference of the side branch vessel (in directions out of the plane of the paper of figure 7). Alternatively, assuming *arguendo* that Lam fails to inherently disclose an elliptical cross section, Kim teaches that the cross-section of a stent should be elliptical when expanded in order to conform to the inner luminal wall (col. 7, lines 16-25 and col. 10, lines 30-33). It would have been obvious to make the cross-section of the Lam stent elliptical when expanded so

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that it too would have this advantage. As to claims 11-14, Lam fails to disclose the specific rapid exchange catheter. However, it is old and well known in this art to use rapid exchange catheters to facilitate easy exchange of the catheters. It would have been obvious to use such a catheter in the Lam procedure in order to obtain this advantage.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note col. 3, lines 56-58 of Susawa et al. (5,591,222) and col. 8, lines 28-31 of Bailey et al. (6,652,578).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (703) 308-2981. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (703)308-2154. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.


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mht

9/21/04



MICHAEL THALER

PRIMARY EXAMINER

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